

- [ Imagine 1964 had been spent planning the
- (a) introduction of ground troops into SVN;
  - (b) invasion of NVN;
  - (c) ground troops into Laos (despite records of 1962)

Note scenarios

2. Imagine Brief to current officials in DOD, State, Defense WH, as to what actions they might be called on to plan, consider, undertake that would constitute war crimes; what their personal responsibility would be; actions they might take (e.g., expose, resist, refuse... witness;)

3.

4. Counsel to drafters, on above. <sup>OC's</sup> Refuse induction? Orders?
5. Talks to War Colleges; affect curriculums.
- 6.

5. What is relation of USG practices to "rule of law" (See John Hopkins speech, April 7, 1965).

What "legal" actions might US have taken?

(Note fear of "forcing SU to side with Hanoi": in contrast to RT, Cambodia)

(True, Laos actions did not lead to commitment by SU. Did this mislead US?)



Paul Weiss:

representing psychiatrist Dr. Switzers:

c. right not to be compelled to commit war crimes.

(More is known via key case,  $2\frac{1}{2}$  years ago, on evidence of pattern of war crimes)

- Defense of soldiers who refused to invade Cambodia.

- Citizens' tribunal: - bringing specific, detailed indictments;  
- pointing out legal aspects of current  
New actions

(Achieve role like that of Drew Pearson, w.r.t. leaks on corruption)

- Educate public  
Congress  
officials

on legal issues  
Personal respons.  
Facts

- Do legal analysis of accounts of decision-making  
by participants,  
in Schlesinger, Lovanov, Silman, Hooper: Ackerson

Take these as Confessions [e.g., Schles on Bay of Pigs]  
for indictment

- Compare Admin assurances to Congress, via Fulbright, w.r.t. Joint Gulf Resolution, with Admin plans

- N - Encourage litigation in contributing countries  
Philippines (cont in Korea, Thailand...  
Australia

on contributing to aggressive war, etc.

or against them: e.g. Koreans

(+ USG, for introducing Koreans  
as mercenaries.)

- Legal aspects of "coercive bombing."

- Anglo practice in "institutionalizing war crimes."



Prof. Friedman:

Face question: do the country concerned any longer with the relation of its actions to international law?

[Note efforts by Admin to relate its actions to "preservation of law" and to treaties, etc.]

- Consider professional approaches, challenges, to lawyers in office of Counsel to State, Defense?



Friedman: USG is still reluctant to admit openly the fact that it increasingly acts as an imperial power with sphere-of-influence aspirations, and is contemptuous of rights of smaller nations, and of international law.

[Face the fact of: irresponsibility of lawyers, in educating public (+ themselves) on <sup>legal</sup> issues + facts.

e.g. if old issues are to be raised (~~US~~ 1954, elections, etc.) must face question, "When were lawyers + courts on these issues 25 years ago, 10, 5 years ago?" )



Gordon:

2 days after Geneva Conf., July 23, 1954

— But Dulles states on need for unilateral intervention.

(Gordon: wrong: VM units did not start struggle in 1954.

~~3~~

S. is addressing basic character of our intervention —  
determining unilaterally the character of another gov —

[Does this give a good legal basis?

Or is it for educating public, e.g. by Schoenbaum)

△

Weiss: "Facts are available."

(On low-level atrocities;

on gross aspects of USG policies, what

we have done as a gov;

But not on intent, and on individual role.

Stewart Mucken of AFSC has committee to

publicize war crimes: Kolko, Falk, Weiss...

Suits:

1. Refusal of induction.
2. Civil damage: victims of war crimes  
(e.g., of Korean atrocities.)  
including as defendants those who denied  
& proposed & implemented criminal policies.

[ subpoena personal files of past officials? ]

[ What would be clear evidence of a crime  
against the peace, by the USG? ]

What would be a crime?

other than proof of intent to aggravate

[ Let Falk to go over material. ]



[Purposes of raising issue:

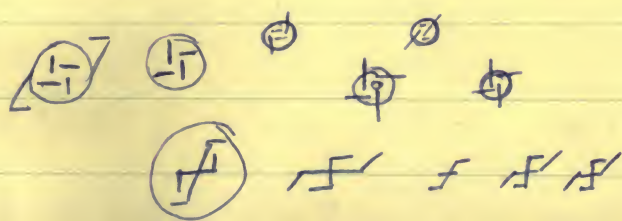
1. Stop Cambodia, VN
2. Avert escalation: Laos  
Cambodia  
NVN  
China/SU
3. Confront pattern of US pattern of intervention
4. of Executive action
5. US bombing policies.
6. CIA role

Schell: Reporter is up against fact that the USG has presented a coherent image of reality that happens to be completely wrong. Can't fight it.

[Phoney. (a) Reporters don't try.

(b) " agree with US intervention.

(c) Publishers/editors censor, not just USG.





DE: Don't be deterred by past attitudes  
of public; a purpose is to change them;  
an advantage of using courts should be that they  
aren't deterred by public opinions.

Even courts, judges, may change behavior as  
a result of changed views toward this war.

Consider issues in light of:

- (a) Much greater availability of facts on decision-  
making  
LIKE NUREMBERG DOCS.
- (b) Possible expansion of court war.  
e.g. genocide - NVN

- bombing of NVN
- bombing of civilians: NVN, SVN, Cambodia
- 34A; covert actions
- involvement in coups
- war crimes:

Change attitudes on: - bombing  
- intervention (nature of "aggression")  
- planning/provoking major war.

If this would help, suggest how it could be  
brought about. Cf. my own case... Who wants to  
discuss?  
[Can USG conceal crimes?]

What if you know of crimes;

What if soldier wants to resist order to commit war crime  
(yet no court will hear his defense?)  
How can he have a fair trial?

Ferency: Use this as Human Right: not to kill in a  
war of aggression, or be killed in it...



Ferency:

To prove we encouraged GVN to refuse discussion of elections in 1956, is to prove "breach of the peace."

(How about: overthrowing, or accepting overthrow, of govts that might be "neutralist," or end war.)

(Did we violate undertaking not to overthrow accords by force)

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[ Define some future action, and evidence of it, that would be a crime.

✓ Wheat Morgan:

Taylor: Supreme Court would probably find war legal, under the "supremacy clause." This would be counterproductive. (Wheat: agrees on Prediction; disagrees that process would be C.P.)

Taylor: agrees with "cosmians" that war crimes approach is better than aggressive war, etc. "Congressional appropriations constitute ratification of the war..."

[So what? So whole nation agreed?]

"But the Supreme Court can't decide; statutes & treaties over-ride "international common law..."

(over-ride Nuremberg?! UN Charter?]

Ferney: "Cambodia ratified our invasion afterwards" (By smiling?)

"If we invaded Thailand, for prison money, against their wishes..."

[So there any way to restrain the President and his subordinates in their use of the Armed Forces: when, where, how, to what end?]

Amsterdam  
Dodson?  
Velvet



Tom Foner: Public Accountability

So long as you produce something, DOD will assume your viability; you can't go bankrupt.

perhaps 50% of all engineering talent in the country is in defense-related industries: devoted to getting production contracts

Objections are open-ended: "supremacy" in strategic weapons, tactical superiority <sup>in conventional weapons</sup> elsewhere except for Western Europe

No public accountability of defense industries.

- No cost/profit account: profits are obscure...
- Procurement process unknown.
- Classified data.
- ~~Allegation~~ No anti-trust: single consumer  
unique products  
national security

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Sunday

[<sup>2</sup> We are fighting not of the people of SVN (or, VN).  
i.e. we are fighting to impose the unbelligerent rule  
of a gov <sup>the majority</sup> ~~they~~ don't want. ~~on the major~~  
(just as is NVN: on much smaller  
scale, given motivation of this minority of supporters  
(low pay), methods they use

(Also, NVN is VNese, unlike US)

|| Everything we say about status and aim of VC/DRV  
applies to GVN/US.

minority  
oppression  
brutal

"foreign control" (actually, true of us, not DRV)

"illegitimate" (less true of DRV/VC than of GVN/US)



~~Re~~ Chief Morgan:

Can't get a prosecution of individuals into courts.  
[Can <sup>if</sup> ~~with~~ data available?]

[What if case is made?

How warn individuals in OOD? Are they immune?

Can there be high-level crimes without criminals?]

Can get ruling, from the right judge, on  
legality of war, etc., into a trial (a) defending someone  
from prosecution;  
(b) in civil suit.

Get judge to grant immunity from prosecution by  
USG for revealing classified info; i.e. to enjoin  
Federal authorities from prosecuting.

Or, get Fulbright to subpoena witnesses; <sup>in open hearing;</sup> he refuses  
to give testimony; he is threatened with contempt of  
Congress. He is then in between Congress & Feds;  
that's OK; go ahead & oblige Congress:

("the risk of 10 years to death")

10 years for revealing to US  
death, to foreigners

(but: First Amendment).